

December 5, 2018

MEMORANDUM

To: Members of the Housing, Health, Energy, and Workers' Rights Committee
From: Patricia Lee and Asha Venkataraman, Council Central Staff
Subject: CB 119374: Office of the Employee Ombud

On December 6, the Housing, Health, Energy, and Workers' Rights committee (HHEWR) will discuss [Council Bill \(CB\) 119374](#), establishing the Office of the Employee Ombud (OEO). This memo provides (1) background leading up to the introduction of the Council Bill; (2) a description of the bill; and (3) issues identified by Central Staff and Councilmember Mosqueda, as well as Councilmember Mosqueda's proposed amendments to address those issues. The amendment language is included in a substitute version of CB 119374, attached to this memo (Attachment A). The origins of the legislation and issues that Central Staff identified are described in a [October 23 memo](#) presented and discussed during the budget process.

Background

Due to concerns about workplace culture that surfaced Citywide over the last several years, the Mayor's Office established the Anti-Harassment Interdepartmental Team (IDT), which issued recommendations in its July 2018 report, *Addressing and Preventing Workplace Harassment and Discrimination*. As noted in the October 23 memo, Councilmember Mosqueda's staff, among other City department staff, participated as members of the IDT.

The IDT recommended the creation of and specific characteristics for an Ombuds function within the City to address a variety of concerns. In particular, the IDT's report recommended that the City:

"Immediately investigate and propose a structure for an Ombuds function within the City. This neutral third party is necessary to adequately address the lack of trust and support people experience when they report incidents of harassment. A proposal should be led by OCR and SDHR and be completed within three months. The Ombuds function will address these overarching concerns: (Immediate-Mid-Long)

- a. Be an advocate for employees*
- b. Be independent (of the executive)*
- c. Address concerns that employees have that may not rise to the level of a full investigation*
- d. Offer support*
- e. Be trauma-informed*
- f. Follow up with employees throughout the process*

- g. Offer confidential support (they will not be a mandatory reporter)*
- h. Listen with empathy*
- i. Engage in harm reduction*
- j. Communicate with regular updates and completely respond to my questions*
- k. Help to hold leadership accountable.”¹*

As part of its efforts, the IDT highlighted four high priority areas for immediate implementation: Accountability & Values, Central Hub, Independent Advocate System, and Comprehensive Training. The recommendations reflect a multi-faceted approach, recognizing that multiple changes may be necessary to implement them. As applicable here, the “Central Hub” priority area includes:

- *“Establish an independent entity to support Citywide intakes, investigations, and review to replace existing system. Communicate and educate on multiple entry points and resources for support.*
- *Ensure options to be anonymous, confidential, rooted in [race and social justice], independent, and relational.”²*

The “Independent Advocate System” includes:

- *“Launch an advocate system to support employees through the intake, reporting, investigation, resolution, and aftercare processes.*
- *Advocates will be survivor-centered, competent, passionate, RSJI-trained, skilled in trauma-informed care practices and not mandatory reporters.”³*

In response to the IDT Report and recommendations, Mayor Durkan signed [Executive Order 2018-04](#) on September 21, 2018, outlining how the Executive branch would reform and update its handling of allegations of harassment and discrimination. The Mayor’s Office subsequently transmitted CB 119374 to establish the OEO in conjunction with the 2019-2020 Proposed Budget and added \$564,000 in 2019 and \$562,000 in 2020 to support start-up costs and three positions in the new office. The Mayor’s Office indicated that the OEO would enter into a memorandum of understanding to use Seattle Department of Human Resources (SDHR) staff for administrative support. The proposed budget also addressed the “Central Hub” recommendation by adding a City Investigator to SDHR to coordinate employee intakes and investigations and develop a consistent approach to intakes and investigations across the City. The Council did not approve the expenditure of funds for the OEO or pass the legislation.

¹ City of Seattle, Anti-Harassment Interdepartmental Team, Addressing and Preventing Workplace Harassment and Discrimination, Page 36 (July 2018).

² *Id.* Page 2.

³ *Id.*

Instead, the Council adopted [Green Sheet 23-1-B-1](#) during the budget review process to proviso funds until the Council passed CB 119374. The proviso reads:

“None of the money appropriated in the 2019 budget for the Office of Employee Ombud may be spent to hire staff, set up administrative functions, or establish the office until the City Council passes an ordinance approving the establishment of an Office of Employee Ombud; however, this spending restriction shall not apply to the initial administrative tasks of identifying a physical office space, beginning the recruitment for the Director, or assessing the equipment needed for a new office.”

The HHEWR committee plans to discuss CB 119374 in December and potentially again in January and plans to vote it out of committee either in December 2018 or in January 2019, with the goal of scheduling a Full Council vote on January 21, at the latest.

CB 119374

This legislation establishes and codifies the new OEO in the Seattle Municipal Code. As proposed, it provides that the:

- Mayor appoints, and the Council confirms the OEO Director.
- OEO mission is to “assist individual City employees in understanding their options and resources regarding allegations of workplace misconduct and navigating the City’s processes and systems for reporting, investigating, and addressing work place conduct concerns including, but not limited to allegations of harassment.”
- OEO’s functions are to:
 - Provide navigation to City employees about their options for addressing allegations of workplace harassment, discrimination, or other misconduct while maintaining confidentiality;
 - Facilitate discussions to address miscommunications that may have led to City workplace conflict; and
 - Report by March 31 annually to the Mayor’s Office and the Council on broad systemic issues including recommendations to improve the City’s Personnel Rules, investigation system, workplace expectations, and other City processes and systems.
- OEO director shall provide input to the Mayor and the Council on the OEO’s performance recommendation about any process improvements.

Under this legislation, the OEO would operate independently of other City departments, assist City employees in understanding and navigating the City processes available, and be an alternative source of information to what is currently provided. The OEO would not have the authority to conduct investigations; instead, investigations would be streamlined in a unit in SDHR for all departments. Currently, many City departments conduct their own investigations.

Proposed Amendments by Councilmember Mosqueda

In reviewing CB 119374, Central Staff and Councilmember Mosqueda identified a variety of issues about how the OEO is established and functions, including that the proposed legislation does not embody all the IDT Recommendations about the ombuds function. The following summarizes these issues and the amendments to mitigate concerns.

1. CB 119374 does not fully reflect the IDT recommendations or detail how the OEO will function.

CB 119374 provides a broad description of the OEO's mission and functions but does not provide detail on how the OEO will conduct itself or how it might better meet the IDT recommendations. Proposed amendments reflected in Section 3.15.022.C (Att. A Pages 5-6) would require the OEO to submit an implementation plan to the Council by the end of the second quarter of 2019 describing how the OEO will:

- Maintain data on the number, types and outcomes of complaints and inquiries received;
- Maintain and communicate employee confidentiality;
- Recommend whether and how oversight will be structured, in consultation with the IDT;
- Develop a written disclaimer notifying City employees that their consultation with the OEO does not constitute the filing of a complaint or legal action, is not considered legal advice, and that the decision to pursue any options is the decision of the City employee;
- Recommend in-person trainings to prevent workplace discrimination and harassment in City employment upon hire and/or on a routine basis;
- Coordinate with the City's contracted Employee Assistance Program (EAP) for appropriate emotional assistance and consultation referrals;
- Review current structures in the City to address harassment and discrimination and recommend changes needed, including evaluation of the best placement for investigations to address barriers to reporting and underreporting; and
- Review the structure of the OEO and consider it as an independent office to ensure it is free from undue influence by elected officials or other reporting authorities.

2. The OEO is an office in the Executive Department with limited independence.

The IDT recommendations express a desire for independence, and CB 119374 proposes an office within the Executive Branch that is independent from the Seattle Office for Civil Rights (SOCR) and SDHR. The proposed amendments would strengthen the independence of the OEO while maintaining it in the Executive Branch:

- Section 3.15.020 (Att. A Page 3) would expressly state that the "OEO shall be free of

undue influence by elected officials or other reporting authorities” and require the OEO to provide all reports and requested data concurrently to the Mayor and the Council;

- Section 3.15.022.C.8 (Att. A Page 6) (as described in Issue 1) would require the OEO to submit an Implementation Plan, of which one of the elements is reviewing the OEO’s structure to make the OEO independent and free of undue influence from elected officials or reporting authorities;
- Section 3.15.022.D (Att. A Page 6) would require that the OEO develop its annual report in consultation with the IDT or a subsequent oversight body, labor organizations, and other key stakeholders.

3. It is unclear if the OEO will serve non-Executive Branch employees.

As transmitted, CB 119374 was not completely clear about which employees the OEO serves, as the OEO was first discussed through Executive Order 2018-04, which, by its nature is only applicable to Executive department employees. The proposed amendment reflected in Section 3.15.022.A.1 (Att. A Page 3) states that the OEO shall assist individual City employees in all branches of City government.

4. The role of the OEO in providing information is limited.

The IDT recommended that the OEO should be an advocate for employees by supporting them throughout intake, reporting, investigation, resolution, and aftercare processes. CB 119374 gives the OEO the role of providing neutral and impartial information to employees about the City’s options for dealing with allegations of harassment, discrimination, and other misconduct. The proposed amendments reflected in the sections described here make the following changes:

- Section 3.15.022.B (Att. A Pages 4-5) would broaden the role of the OEO from a neutral place of providing information to an office that will assist employees in understanding and assessing their situation and options, though it is not authorized to provide legal advice.
- Section 3.15.022.B.1 (Att. A Page 4) would allow the OEO to provide this type of assistance to employees regarding workplace conduct that (i) meets the legal requirements to be harassment, discrimination, or retaliation; (ii) is in contravention of City Personnel rules, workplace expectations, or policies; and (iii) is inappropriate though it may not rise to the level of a legal violation or violate City policy.
- Section 3.15.022.B.2 (Att. A Pages 4-5) would allow the OEO to assist employees in understanding their options about (i) the City’s processes and systems for addressing workplace conduct; (ii) the City’s Alternative Dispute Resolution process; (iii) as applicable, how to contact their union representative to discuss options; and (iv) seeking remedies through State or Federal agencies, or through private legal actions.

The OEO serves City employees who may have workplace conduct concerns as well as employees who have allegedly engaged in inappropriate conduct. The following are proposed amendments to support employees:

- Section 3.15.022.B.3 (Att. A Page 5) would specifically allow employees to bring another person with them for emotional support to any discussions employees have regarding miscommunication or workplace conflict.
- Section 3.15.022.B.4 (Att. A Page 5) would allow the OEO to refer employees to other programs such as the EAP.

5. Oversight over the OEO is not covered by CB 119374.

Executive Order 2018-04 states that the IDT will work with the SDHR Director and the OEO to submit an annual work plan. It also states that the IDT will continue to meet and provide oversight of OEO implementation and requests that the IDT work with SDHR to guide the City's efforts. However, these roles are not reflected in the legislation. The following proposed amendments would address this issue:

- Section 3.15.022.C.3 (Att. A Pages 5-6) would require the OEO to consult with the IDT a subsequent oversight body as well as labor organizations and key stakeholders on its recommendations regarding oversight of the OEO.
- Section 3.15.022.D (Att. A Page 6) would require the OEO to develop its annual report in consultation with the IDT or a subsequent oversight body as well as labor organizations and key stakeholders.

6. The City's accountability to the OEO is unclear.

CB 119374 requires an annual report from the OEO on "any issues that may extend beyond the experience of individual employees and have a broader, systemic impact on the City, including providing any recommendations to improve the City's Personnel Rules, complaint and investigations systems, workplace expectations, and other applicable City processes and systems." However, it does not require the Mayor or the Council to respond or take any action on any such recommendations.

Proposed amendments in Section 3.15.022.D.1-4 (Att. A Page 7) would broaden the elements on which the OEO must report to include:

- Recommendations on training, specifically for live, in-person training;
- Information on patterns of inappropriate workplace conduct;
- Recommendations on systemic changes to truly root all City workplaces in racial equity and social justice.

In addition, the amendment language reflected in Section 3.15.022.E (Att. A Page 7) would require the Mayor and the Council committee with jurisdiction over the OEO to respond to

the annual report within 120 days of the receipt of the report. The written responses would include:

- Any policies or legislation the committee with jurisdiction over the OEO intends to put before the Council for approval;
- Any further information the committee with jurisdiction over the OEO or the Mayor would like from the OEO or the IDT;
- Any alternatives the committee with jurisdiction over the OEO or the Mayor would like the OEO or the IDT to develop; and
- Any recommendations, and the reasons therefore, the committee with jurisdiction over the OEO intends to reject or consider on a longer timeline.

7. Remaining amendments.

Amendments not mentioned above include the following:

- Changes to the recitals would:
 - Reaffirm the Council's commitment to City employees having a safe and respectful workplace (Att. A Page 1); and
 - Specifically call out the IDT's July 2018 report and its recommendations (Att. A Page 2).
- Incorporating in-person training as:
 - Part of the OEO's mission to provide recommendations (Section 3.15.022.A.2 - Att. A Page 4);
 - One of the elements to explore in the Implementation Plan (Section 3.15.022.C.5 - Att. A Page 6); and
 - Part of the recommendations provided in the annual report (Section 3.15.022.D.2 – Att. A Page 7).
- Expansion of the annual report would include:
 - Recommendations on training, specifically for live-in person training (as stated above) (Section 3.15.022.D.2 – Att. A Page 7);
 - Patterns of inappropriate workplace conduct (Section 3.15.022.D.3 – Att. A Page 7); and
 - Systemic changes to truly root all City workplaces in race and social justice (Section 3.15.022.D.4 – Att. A Page 7).

Attachments:

- A. Proposed Amendments to CB 119374

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Deputy Director